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BSH HOME APPLIANCES CORPORATION
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EXAMINER

ELVE, MARIA ALEXANDRA

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BERND HEISELE, CLAUS KOTHER
and KARL-HEINZ REHM

Appeal 2009-005998
Application 10/525,713
Technology Center 3700

Decided: 12 March 2010

Before JAMESON LEE, RICHARD TORCZON and SALLY C. MEDLEY,
Administrative Patent Judges.

MEDLEY, *Administrative Patent Judge.*

DECISION ON APPEAL

A. STATEMENT OF THE CASE

BSH Bosch und Siemens Hausgeraete GmbH (“BSH”), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection of claims 4-7. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

References Relied on by the Examiner

Ota	6,034,349	Mar. 07, 2000
Armstrong	4,420,005	Dec. 13, 1983
Ohe et al. (“Ohe”)	EP 0376682 A1	Jul. 04, 1990

Rejections on Appeal

The Examiner rejected claims 4 and 7 as unpatentable under 35 U.S.C. § 103(a) over Armstrong and Ohe.

The Examiner rejected claim 5 as unpatentable under 35 U.S.C. § 103(a) over Armstrong, Ohe and Ota.

The Examiner rejected claim 6 as unpatentable under 35 U.S.C. § 103(a) over Ohe.

The Invention

BSH discloses a method and device for producing nozzle-type openings in dishwasher spray arms using a laser. Spec. pp. 1-3. Independent claims 4, 6 and 7 are reproduced from the Claims Appendix of the Brief below:

4. A method for producing nozzle-type openings in spray arms for dishwasher machines, comprising:
removing, via laser, material on the surface of a spray arm blank after the spray arm blank has been produced so as to form nozzle-type openings in the spray arm blank.
6. A device for producing nozzle-type openings in spray arms for dishwasher machines, comprising:
a device for releasably securing the spray arm blank in a fixed position; and a laser disposed relative to the arranged

on the device for releasably securing the spray arm blank in a fixed position, the laser being operable to remove material on the surface of a spray arm blank secured in the fixed position so as to form nozzle-type openings in the spray arm blank.

7. A method for producing nozzle-type openings in spray arms for dishwashing machines, comprising:
blow-molding a plastic spray arm blank; and cutting a nozzle into the surface of the spray arm blank by a laser, wherein the nozzle is sharp-edged to create a constriction of a stream passing through the opening.

B. ISSUES

Has BSH shown that the Examiner incorrectly found that the applied prior art discloses the elements claimed?

C. FINDINGS OF FACT

Ohe

1. Ohe describes a method and apparatus for laser drilling holes in a synthetic resin tube suitable for use in irrigation and sprinkling. Col. 1, ll. 1-4; col. 2, ll. 4-17.
2. The tube (1) is retained in a tube retainer (2) which has a base (2b) to which the laser beam irradiating portion (3) is mounted such that it is positioned on the side of the tube retainer (2) and can focus the laser beam on the surface of the retained tube. Col. 3, ll. 18-25; figs. 1, 2, 6, 7.
3. The tube is molded in a tubular state in which air is enclosed in the tube. Col. 3, ll. 54-55.
4. Air may be blown into the tube from an air inlet provided in the distal end of the die in order to inflate the tube. Col. 3, ll. 55-58; figs. 3, 5; claim 8.

Armstrong

5. Armstrong describes a dishwasher with a spray arm made of plastic tubing with a series of holes drilled into the plastic tubing. Col. 2, ll. 32-52; figs. 2-4.
6. The spray arm is forced to rotate by the opposite reaction pressure of water jets from the holes. Col. 2, ll. 44-47; col. 3, ll. 21-26.

Ota

7. Ota describes a laser machining system for drilling holes in polymer materials. Col. 1, ll. 6-11; col. 3, ll. 14-16.
8. Ota depicts making holes having the shapes of a circle, a square and a triangle. Col. 1, ll. 33-37, 60-65; figs. 1, 5, 8.

D. PRINCIPLES OF LAW

The Examiner bears the initial burden of presenting a prima facie case of unpatentability, and if that initial burden is met, the burden of coming forward with evidence or argument shifts to the applicant. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

E. ANALYSIS

Claims 4 and 7

Independent claims 4 and 7 are reproduced above. With respect to those claims, the Examiner finds that Armstrong describes a dishwasher with spray arms in which holes are drilled, but does not teach the type of drilling used to form the holes. Ans. 4, 12. The Examiner finds that Ohe describes forming holes in a synthetic resin tube using laser irradiation which implicitly creates a sharp edged opening or hole. Ans. 4, 8, 12. The Examiner further finds that Ohe describes blow-molding a plastic tube since Ohe describes that air may be blown into the molded tube from an air inlet

(7a) provided in the distal end of the die (7). Ans. 12, citing Ohe fig. 3. Lastly, the Examiner finds that it is well known in the art, as taught by Armstrong, that the holes on a spray arm are constricted, since the reaction pressure of the water jets from the holes cause rapid rotation of the spray arm. Ans. 12, citing Armstrong col. 2, ll. 43-47. The Examiner determined that it would have been obvious to one with ordinary skill in the art at the time the invention was made to use a laser to form the holes as taught by Ohe in the Armstrong system because the resulting holes would be very small, thereby increasing water pressure and enhancing the cleaning of dishes. Ans. 4.

BSH reproduces the limitations of claims 4 and 7 and argues that neither Armstrong nor Ohe, either alone or in combination, teaches or suggest the features of the invention as recited in claims 4 and 7. Br. 7. A statement which merely points out what a claim recites will not be considered an argument for patentability of the claim. 37 C.F.R. 41.37 (c)(1)(vii). BSH does not present arguments to explain why the Examiner's explicit findings are incorrect. Arguments not presented in the Appeal Brief "will be refused consideration by the Board, unless good cause is shown." *Id.* Merely pointing out the claim limitations and concluding that the prior art does not teach or suggest the claim limitations does not rise to the level of a sufficient showing that the Examiner's findings and conclusions are incorrect. The specifics of the Examiner's findings must be addressed.

For all these reasons, we sustain the rejection of claims 4 and 7 as unpatentable over Armstrong and Ohe.

Claim 5

Claim 5 is dependent on claim 4 and further recites: “nozzle-type openings having shapes deviating from a circular shape.” Br. 11, Claims App’x. The Examiner does not rely on Armstrong and Ohe for describing the disputed limitation, but instead finds that Ota describes laser formed holes with desired shapes and sizes. Ans. 5. Ota describes making holes having the shapes of a circle, a square and a triangle. Col. 3, ll. 33-37, 60-65; figs. 1, 5, 8. The Examiner determined that it would have been obvious to one with ordinary skill in the art at the time the invention was made to form different shapes as taught by Ota in the Armstrong and Ohe system because tailored holes can direct the water such that cleaning action of the dishwasher is optimized. Ans. 5.

BSH reproduces the limitations of claim 5 and argues that none of Armstrong, Ohe and Ota, either alone or in combination, teaches or suggests the features of the invention as recited in claim 5 including the method steps recited in claim 4. Br. 8. For similar reasons discussed above in connection with claims 4 and 7, BSH’s arguments are conclusory and do not show that the Examiner’s findings are incorrect.

We sustain the rejection of claim 5 as unpatentable over Armstrong, Ohe and Ota.

Claim 6

Independent claim 6 is reproduced above. With respect to claim 6, the Examiner finds that Ohe describes a tube retainer having ring members which meets the claim limitation of “securing the spray arm blank in a fixed position”. Ans. 7, citing Ohe fig. 1. The Examiner further finds that the conveyance of the tube through the tube retainer meets the claimed

limitations of “releasably”. Ans. 7, citing Ohe fig. 1. Lastly, the Examiner finds that Ohe describes a laser beam irradiating portion (3) mounted on the tube retainer base (2b) which meets the limitation of a laser disposed and arranged relative to the securing device. Ans. 3, 7-8; *see* Col. 3, ll. 18-25; figs. 1, 2, 6, 7. The Examiner determined that it would have been obvious to one with ordinary skill in the art at the time the invention was made to use tubing in a dishwasher or any device requiring a drilled tube. Ans. 3.

BSH reproduces the limitations of claim 6 and argues that Ohe does not teach or suggest a device as recited in claim 6 for producing nozzle type openings in spray arms for dishwasher machines. Br. 9. For similar reasons discussed above in connection with claims 4 and 7, BSH’s arguments are conclusory and do not show that the Examiner’s findings are incorrect.

We sustain the rejection of claim 6 as unpatentable over Ohe.

F. CONCLUSION

BSH has not shown that the Examiner incorrectly found that the applied prior art discloses the elements claimed.

G. ORDER

The decision of the Examiner rejecting claims 4 and 7 as unpatentable under 35 U.S.C. § 103(a) over Armstrong and Ohe is affirmed.

The decision of the Examiner rejecting claim 5 as unpatentable under 35 U.S.C. § 103(a) over Armstrong, Ohe and Ota is affirmed.

The decision of the Examiner rejecting claim 6 as unpatentable under 35 U.S.C. § 103(a) over Ohe is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

Appeal 2009-005998
Application 10/525,713

AFFIRMED

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